IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

CRL.A.No. 163 of 2000()

(AGAINST THE JUDGMENT DATED 28/2/2000 IN ST.9/1998 ON THE FILE OF THE SPL. JUDGE, THRISSUR, UNDER THE ESSENTIAL COMMODITIES ACT X OF 1995)

.....

APPELLANT: (ACCUSED IN S.T.9/98):

RAJAPPAN, AGAED 48, S/O.SEBASTIAN,
PADINJARE VEEDU, WARD NO.I,
KADAKKARAPPALLY PANCHAYATH,
CHERTHALA.

(NOW UNDERGOING CONVICTION CENTRAL PRISON,VIYYUR)

BY ADV. SRI.V.L.SHENOY

RESPONDENTS: (COMPLAINANT IN S.T.9/98):

----

1. **STATE OF KERALA, REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

2. **SUB INSPECTOR OF POLICE, PATTANAKKADU POLICE STATION, PATTANAKKADU, ALAPPUZHA DISTRICT.**

BY PUBLIC PROSECUTOR SRI. C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON 17/07/2007 DELIVERED THE FOLLOWING:

ORDER ON CRL.M.P.NO.1101/2000 IN CRL.APPEAL NO.163/2000

DISMISSED

17/07/2007 **SD/-K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

Kss

K.R. UDAYABHANU, J.

CRL.A.NO. 163 OF 2000

DATED THIS THE 17th July 2007

JUDGMENT

The appellant stands convicted for the offence under Section7(1)(a)(ii) read with Section 3 of the Essential Commodities Act, 1955 and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.1000/- and in default to undergo simple imprisonment for one month. It is also ordered that the pre-trial imprisonment undergone shall be set off.

2. The prosecution case is that the accused was found in unauthorised possession of about 820 litres of kerosene on 14-1-1994. He had no valid licence to stock the same. He was tried by the Special Court for Essential Commodities Act cases.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 8 and EXts.P1 to P6. The defence produced Exts.D1 to D4. The documents produced consisted of the bill for the purchase of the above quantity of kerosene on 12-1-1004, i.e. just two days before the alleged seizure. The

purchase was from an authorised dealer. He has also produced Ext.D3 letter of the District Supply officer dated 21-10-1994 along with the retail licence issued under Parallel Marketing System. Ext.D3 dated is the subsequent date of seizure. Ext.D2 is a copy of licence which is dated 11-10-1994. The contention of the accused is that he was having valid licence.

4. Counsel for the appellant has stressed the fact that the Special court was not having jurisdiction as the provision for constituting Special Court in terms of Section 12 A of the Essential Commodities (Special Provisions Act), 1981 lasted only until 31-8-1997 and hence it is only the regular courts that is having jurisdiction to try the particular case. He has also relied on the decision of this Court in **Savarikutty @ Chacko Xavier v. STate of Kerala, I.L.R.2006(4) Ker.247.**

5. In the circumstances, I find that the trial and conviction by the Special Judge is without jurisdiction; and hence the order in S.T.No.9/1998 is herewith set aside.

Considering the fact that the incident is dated 14-1-1994 and that more than 13 years have been elapsed since then and that the accused has already undergone trial and that he was facing the criminal proceedings for so long and since the date of the judgment in February 2000, he was living under the shadow of impending imprisonment and also considering the nature of the offence, I find that directing the appellant to undergo trial once again would not just. Hence, further proceedings in S.T.No.9/1998 is herewith set aside. The Crl. appeal is allowed.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.A. 163 of 2000
JUDGMENT

17-7-2007